

February 24, 2000

CMP GROUP, INC. ET AL
Request for Approval of Reorganization
And of Affiliated Interest Transactions

ORDER ON
RECONSIDERATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we reject petitions to reconsider our Order of January 4, 2000 (January Order) received from Friends of the Coast (FOTC), Sam Miller and the Public Advocate. We clarify our January Order in certain respects as requested by Energy East. Unless specifically addressed in this Order, all other aspects of our January Order stand as articulated in that Order.

II. DISCUSSION OF REQUESTS FOR RECONSIDERATION

The Public Advocate, FOTC, and Sam Miller all filed timely letters asking the Commission to reconsider its January Order. Energy East filed a letter on January 24, 2000 responding to the Commission's directive that it file a letter prior to closing stating that it agreed to the terms and conditions contained in the January Order. Energy East states it accepts the terms and conditions at pages 24-29 of the Order based upon certain clarifications contained in its letter. After review of the letter, it appears that Energy East is actually seeking clarification or reconsideration of certain parts of the Order. We therefore treat the January 24 letter as a Petition for Reconsideration and address certain issues as described in Section D below.

A. FOTC

FOTC asks for reconsideration because, it argues, the Commission did not address whether Energy East had adequately informed itself regarding liabilities and other long-term considerations at Maine Yankee Atomic Power Station, thereby ensuring that Maine citizens will be protected with the change of ownership. To the extent our Order was unclear concerning FOTC's concerns, we address them here.

Nothing in the record before us indicates that Energy East, as the parent company of CMP, will be unable to fulfill its obligation to complete the decommissioning of Maine Yankee safely. The record shows that Energy East, prior to agreeing to the

merger, reviewed a vast number of documents related to CMP, including documents related to Maine Yankee. Energy East's due diligence reports also show that Energy East reviewed the Maine Yankee asset. Energy East's operating subsidiary in New York, NYSEG, is an experienced nuclear plant operator and its nuclear expert conducted NYSEG's due diligence related to CMP's nuclear investments. Energy East's witness Mr. Rude testified that the merger does not affect CMP's continuing obligations related to Maine Yankee. Maine Yankee has entered into certain agreements at FERC concerning the costs of its decommissioning. CMP, as a Maine Yankee owner, will continue to be obligated to comply with those agreements and FERC's directives. In addition FERC must approve the merger and the NRC must consent to the transfers of control of nuclear assets.

We find that that Energy East was aware of what it was purchasing and of its continuing obligations as they relate to Maine Yankee. We find that the public interest in safe service is not in any way hindered by the merger with Energy East. Therefore, no additional conditions related to Maine Yankee are necessary.

B. Sam Miller

Mr. Sam Miller,¹ a CMP shareholder, asks for reconsideration, claiming the merger is not consistent with the interests of shareholders and the Commission did not adequately address its responsibility to shareholders in the January Order. He asserts that CMP failed to adequately disclose the increase in value of its investment in Northeast Optic Network, Inc. (NEON) in its proxy statement provided to shareholders on August 31, 1999 and that because of this increase, the price offered per share is inadequate.

Title 35-A section 708(2) does require the Commission to find that the merger is "consistent with the interests" of CMP's investors. In this regard, we give substantial weight to the requirement that shareholders vote to approve the merger. In this case, CMP Group's shareholders voted overwhelming in favor of the merger. Additionally, the section 708(2) requirement regarding shareholder interests involves issues particular to utilities and is not intended to address generic corporate issues. Mr. Miller's basic complaint is that CMP Group will not receive enough for its shares. This is a common shareholder complaint unrelated to CMP's public utility status. Thus, that matter should be dealt with under the applicable corporate laws, not the public utilities statutes.

Mr. Miller's concern that the proxy statement inadequately disclosed the status of NEON is a question over which the SEC has jurisdiction. We offer no opinion as to whether CMP's disclosures fail to meet any SEC requirements for proxy statements. We do note that the NEON stock price has been extremely volatile, and the

¹ Although Mr. Miller is not a party to this case, we consider the issues raised in his petition on our own motion.

stock price would have been available to any shareholder wishing to look it up on any given day. We decline to modify our Order based on Mr. Miller's request.

C. Public Advocate

The Public Advocate (OPA) asks that we clarify footnote 18 on page 28 of the January Order related to the condition that CMP and Energy East must continue to support ARP 2000 as originally submitted by CMP on September 30, 1999. We do not, as a consequence of this Order, require either company to support any materially modified plan which may in the future be proposed by other parties or adopted by this Commission. This requirement is not intended to discourage parties from further negotiations or CMP/Energy East from additional constructive proposals. Based on this clarification, we deny OPA's request to modify the footnote.

D. Issues Raised By Energy East's Response to Conditions

1. Status of Energy East's Letter

We first note that our decisions concerning the merger are reflected only in our orders. Energy East's letter of January 24, 2000 has no legal significance in any future interpretation of our orders. Our silence on any issue raised in the letter means our January Order stands on that particular point.

2. Energy East's Right to Contest a Condition Following the Merger

Several times in its letter, Energy East states that its acceptance of the Order "does not constitute a waiver of rights" or "expand or confer statutory authority." For example, Energy East states it reserves the right to contest a penalty or sanction that it deems inappropriate and it "reserves its constitutional rights" concerning the divestiture condition.

Nothing in our orders is intended to prevent Energy East or CMP from arguing at some future time that we have implemented a condition in an arbitrary or capricious manner or in some way that deprives it of rights to due process. However, to the extent Energy East believes the Commission lacks statutory or constitutional authority to impose any of the merger conditions,² it should make that concern known now by either asking for reconsideration or appealing this order as permitted by law. It is our intention that by closing on the merger, Energy East and CMP will have waived any statutory or constitutional objections to the imposition of the conditions described in our orders. If Energy East disagrees with or opposes this condition or desires further

² This would include the belief that the Legislature exceeded its constitutional authority in granting the Commission the power to impose a particular condition.

clarification, it should seek reconsideration of this Order within 20 days of the date of this Order or otherwise appeal our decision prior to closing.

3. Dividend Payments

Energy East states that it understands that the Commission's authority to limit dividend payments will be exercised "only when other available remedies are found to be inadequate" or "to remedy egregious circumstances." Our order discussing possible penalties for violations of service quality standards contained no such limitations (January Order at 24). We therefore reject what we treat as Energy East's request that we incorporate Energy East's limiting language into our Order.

4. Filing of Capital Budgets

We directed CMP to file its annual capital expenditure budget each December. Energy East asks that it be permitted to file it either in December or promptly after approval, as its corporate budgets are typically approved in January. It also asks if it may request confidential treatment. We agree that CMP should file its capital budget promptly after approval and that it may request confidential treatment of those budgets.

5. Books and Records

Energy East suggests different language with regard to Commission access to the books and records of Energy East and all of its affiliates. The language in our January Order (Order at 25-26) represents our intentions and we decline to change it.

6. SEC-related Matters

Energy East states that it agrees to waive any claim or defense based on preemption of Commission authority over affiliate transactions and rate making "assuming it is not prohibited by law." To the extent it is necessary, we clarify that we do not intend Energy East to break any laws in complying with our Order.

7. Acquisition Premium

Energy East seeks clarification that partial recovery of the acquisition premium is possible and that we will allow recovery to the extent it meets the recovery tests described in the Order. This is our intention, but we agree that the language in the Order could be clearer. To conform the condition imposed on page 27 of the Order with the discussion on page 19, we revise the second sentence of the first paragraph in Section 6 on page 27 to read "Consistent with that discussion, we hereby impose, as a condition of the merger, that recovery of any portion of the acquisition

premium will only be allowed where the savings resulting from the merger itself (and not from some other source) exceed the costs imposed by the merger.”

We also believe that further elucidation of our discussion on pages 18 - 21 concerning the amount of goodwill that could be amortized on CMP's book is warranted. At footnote 14, page 18, we indicate that the amount of any goodwill will depend, in part, on the reevaluation of the non-utility holdings of CMP Group. With regard to those valuations, we expect such valuations to be done in good faith and consistent with sound accounting principles. We reserve the right to review when and how the valuations have been made and to determine how they will be used in any rate making proceeding. We also reiterate that the amount of goodwill assigned to CMP for accounting purposes will not restrict the Commission's discretion in any way in determining the amount of goodwill that may be subject to recovery from ratepayers.

8. ARP 2000

Energy East states its understating that its agreement to support the ARP 2000 proposal is premised on no material changes being made in specified areas (e.g., starting point, productivity factor, duration) and on the Commission processing the case within 6 months, or up to 2 years “only for just and reasonable circumstances.” We agree that if the Commission orders, or other parties propose, material modifications to the proposed ARP 2000, Energy East and CMP would not be obligated to support that modified plan. Our condition requires Energy East to support its proposed ARP 2000 through at least January 2002. With regard to the timing of the ARP 2000 proceeding, we intend to process the case as expeditiously as possible. However, we deny what we treat as Energy East's request that only under certain circumstances may we take longer than six months.

E. Correction of Notice of Appeal

The Commission attaches Notice of Rights to Review or Appeal to every final order, as required by 5 M.R.S.A. 9061. An incorrect version of the notice was mistakenly attached to our original order (it contained language only applicable to certain telecommunication cases). The correct version is attached to this Order.

III. **CONCLUSION**

As described above, our Order of January 4, 2000 stands except for the clarifications described in Section II. D above. In our January Order, we asked Energy East to acknowledge in writing its acceptance of all conditions and terms contained in the Order. We will require no further written documentation of Energy East's acceptance of the clarifications contained in this Order. Instead, Energy East's closing

of the merger will serve as its acknowledgement that it will be bound by all conditions and terms contained in the January 4, 2000 Order, as modified by this Order.

Dated at Augusta, Maine, this 24th day of February, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.